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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 18, 2002 Decided January 24, 2003

No. 01-7142

HIWOT NEMARIAM, ET AL.,

APPELLANTS

v.

THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND

THE COMMERCIAL BANK OF ETHIOPIA,

APPELLEES

Appeal from the United States District Court

for the District of Columbia

(No. 00cv01392)

Donald Francis Donovan argued the cause for appellants. With him on the briefs was *Katherine Birmingham Wilmore.*

W. DeVier Pierson argued the cause for appellees. With him on the brief was *Knox Bemis.*

Before: GINSBURG, *Chief Judge,* HENDERSON, *Circuit Judge,* and WILLIAMS, *Senior Circuit Judge.*

Opinion for the Court filed by *Chief Judge* GINSBURG.

GINSBURG, *Chief Judge*: Hiwot Nemariam and others appeal the district court's dismissal of their suit against Ethiopia seeking recovery for property damage they suffered during the border war between Ethiopia and Eritrea. The district court determined that the Ethiopia/Eritrea Claims Commission was a more appropriate forum for the plaintiffs' claims, and dismissed their case on the ground of *forum non conveniens*. We reverse the judgment of the district court because the Commission does not offer the plaintiffs an adequate remedy.

I. Background

In May 1998 a long-standing border dispute between Eritrea and Ethiopia erupted into a general armed conflict. Nemariam, who was living in Ethiopia at that time, claims that shortly thereafter the government of Ethiopia began expelling persons who, like her, were Ethiopian citizens of Eritrean descent, and confiscating any property they left behind. To take but one example, Nemariam claims that her account at the Commercial Bank of Ethiopia (CBE), an agency or instrumentality of the government, was effectively expropriated when she was expelled from the country because Ethiopian banking regulations permit withdrawal of funds only when an account holder presents a passbook in person at the bank.

In December 2000 Ethiopia and Eritrea signed a Peace Agreement, which formally ended the conflict. It also created the Ethiopia/Eritrea Claims Commission:

> The mandate of the Commission is to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned and controlled by the

> other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.

Art. 5, ¶ 1. The decisions of the Commission are made by a panel of five arbitrators, two chosen by each country and one chosen by the other four. Art. 5, ¶ 2. The Commission, which is based in the Hague, "may hold hearings or conduct investigations in the territory of either party, or at such other location as it deems expedient." Art. 5, ¶ 3.

Ethiopia and Eritrea are the only two parties permitted to appear before the Commission, but they may bring claims "on behalf of [their] nationals, including both natural and juridical persons." Art. 5, ¶ 8. Eritrea or Ethiopia may also "file claims on behalf of persons of Ethiopian or Eritrean origin who may not be its nationals." Art. 5, ¶ 9. The Agreement vested in the Commission exclusive jurisdiction over all claims arising from the conflict "[e]xcept for claims submitted to another mutually agreed settlement mechanism in accordance with paragraph 16 or filed in another forum prior to the effective date of this Agreement." Art. 5, ¶ 8. Therefore, any claim not filed in another forum prior to December 12, 2000, the effective date of the Agreement, could be filed only with the Commission. Paragraph 16 of Article 5 allows Eritrea and Ethiopia to "agree at any time to settle outstanding claims, individually or by categories, through direct negotiation or by reference to another mutually agreed settlement mechanism."

In June 2000 Nemariam filed a two-count complaint against Ethiopia and the CBE in the District Court for the District of Columbia, asserting that Ethiopia's actions amounted to a taking of her property in violation of international law. Nemariam invoked the jurisdiction of the

court under the international takings provision of the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3).

Ethiopia moved to dismiss the case on the ground that the district court was a *forum non conveniens,* pursuant to the four-step test we outlined in *Pain v. United Technologies Corp.*:

> As a prerequisite, the court must establish whether an adequate forum exists which possesses jurisdiction over the whole case. Next, the trial judge must consider all relevant factors of *private* interest, weighing in the balance a strong presumption against disturbing plaintiff's initial forum choice. If the trial judge finds this balance of private interests to be in equipoise or near equipoise, he must then determine whether or not factors of public interest tip the balance in favor of a trial in a foreign forum. If he decides that the balance favors such a foreign forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

637 F.2d 775, 784-85 (D.C. Cir. 1980) (emphases in original); *but see Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) (overruling the third part of the *Pain* test by stating that dismissal is appropriate if the plaintiffs "chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems").

The district court granted the motion. The court first determined that the Commission was an adequate alternative forum; it had five distinguished arbitrators, all well versed in international law, and it was authorized to hold hearings and to resolve claims. Although Nemariam could not bring a claim herself, the district court found that Eritrea could bring a claim on her behalf, that the Commission had jurisdiction to hear that claim, and that Eritrea "has no incentive not to espouse as

many meritorious claims as possible before the Commission."

The district court rejected Nemariam's argument that the remedy provided by the Commission was inadequate because Eritrea and Ethiopia might negotiate a set-off of each other's claims, thereby denying her an award even if she had a meritorious claim. The district court stated, "nothing in the record ... suggest[s] that the Commission contemplates a 'set off' remedy;" and "even if compensation under the Claims Commission proves different than it might be in a U.S. court, this is not a case where the 'remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all.'" (quoting *Piper Aircraft Co. v. Reyno,* 454 U.S. 234, 254 (1981)). Next, the court found the private and public interest factors heavily favored the Commission. Finally, the court dismissed the case without prejudice and provided that "the case is subject to reinstatement for good cause shown if named plaintiffs' claims are not submitted to the Claims Commission by the government of Eritrea despite affirmative, timely request therefore [sic] by plaintiffs."

In the time since the district court dismissed the case, the Commission has implemented procedures and begun the adjudication of claims submitted to it. Eritrea's submissions cover the claims made by Nemariam and the other plaintiffs in this suit. And the Commission has ordered the filing of evidence for those claims and has scheduled a 13-day hearing to begin on June 16, 2003.

II. Analysis

On appeal Nemariam first argues that the Commission is an inadequate forum because, even if her claim is valid, she has no personal right to a remedy from the Commission. Second, Nemariam argues that the Commission is an inadequate forum because she may not file a claim before the Commission and she has no control over any claim Eritrea

may file on her behalf. Third, Nemariam contends that the district court misapplied the private and public interest factors. Finally, Nemariam argues that Ethiopia waived its right to seek dismissal on the basis of *forum non conveniens* when it agreed that "the Commission shall be the sole forum for adjudicating claims" "except for ... claims filed in another forum prior to the effective date of this [Peace] Agreement." Art. 5, ¶ 8.

We review the district court's order dismissing the case for a "clear abuse of discretion." *Piper,* 454 U.S. at 257. Because we agree with Nemariam's first point, we do not reach her other arguments.

Because Nemariam lacks a personal right to a remedy from the Commission, she argues that any "remedy provided by the [Commission to Eritrea with respect to her claim] is so clearly inadequate or unsatisfactory that it is no remedy at all." *Piper,* 454 U.S. at 254. We think that the Commission's inability to make an award directly to Nemariam, and the possibility that Eritrea could set off Nemariam's claims or even an award in her favor against claims made by or an award in favor of Ethiopia, render the Commission an inadequate forum.

First, it appears, as Nemariam says, the Commission cannot award any relief directly to her. Nothing in the Peace Agreement authorizes the Commission to make an award to anybody other than Eritrea or Ethiopia, the parties before the Commission. Although it is true that Article 5, ¶ 9 allows Eritrea to bring a claim "on behalf of persons [like the plaintiffs] of ... Eritrean origin who may not be its nationals," Eritrea would presumably control the disposition of any resulting award.

Second, it appears Eritrea may set off Nemariam's claim or an award in her favor against any claims or awards that Ethiopia may have against Eritrea. Under international law, Eritrea is the master of its own claim before the Commission and may keep or barter any remedy awarded by the

Commission. *See Restatement (Third)* of *the Foreign Relations Law of the United States* § 902, cmt. I (1987) ("The state may determine what international remedies to pursue, may abandon the claim, or settle it"). It is irrelevant whether the Commission currently contemplates that any awards to the respective governments will be set off by them against each other. What matters is that Eritrea and Ethiopia have that option. In fact, Eritrea and Ethiopia may bypass the Commission entirely in resolving their claims. *See* Agreement, Art. 5, ¶ 16 ("The parties may agree at any time to settle outstanding claims, individually or by categories, through direct negotiation or by reference to another mutually agreed settlement mechanism"). Unless Ethiopia can negate these possibilities, we think they render the Commission an inadequate alternative to the district court.

Ethiopia's response is two-fold. First, it points out that Eritrea has stated before the Commission that it intends to give directly to the claimant any award made to it for a taking of private property. Ethiopia does not deny that the Commission cannot require Eritrea to pass through to Nemariam any award it may receive with respect to the claim it has filed on her behalf. Rather, Ethiopia claims that Eritrea intends voluntarily to distribute awards to individual claimants.

Eritrea has indeed indicated in a memorandum to the Commission that "Eritrea believes that, as a general matter, awards should be given directly to claimants.... Financial compensation for large amounts of property damage should also be given directly to the individual victims." By invoking those statements, however, Ethiopia is asking Nemariam and this court to rely upon the goodwill of Eritrea, not upon the power of the Commission to enforce its judgments. In this vein, we note that Eritrea has also recognized the possibility – albeit in circumstances apparently different from those alleged in the present case – that an individual with a meritorious claim might not receive any compensation. In the same memorandum, Eritrea informed the Commission that "the

practical difficulties of individual distribution might outweigh the desirability of individualized compensation." Therefore, Ethiopia is unable to substantiate its claim that Nemariam will receive a remedy if Eritrea succeeds in prosecuting her claim before the Commission.

Second, Ethiopia argues that we should follow *Gonzalez v. Chrysler Corp.*, 301 F.3d 377 (2002), in which the Fifth Circuit affirmed the dismissal of a case on the ground of *forum non conveniens* even though it was unlikely the plaintiff would receive in the alternative forum – namely, a Mexican court – a remedy adequate by United States standards. In *Gonzalez* the law of the alternative forum did provide a remedy, but it capped the potential recovery at a modest $2500, and the plaintiff alleged he would not bring the suit in Mexico because the costs of doing so would outweigh the potential recovery. In this case, however, Ethiopia cannot assure Nemariam of recovering any award at all, even if the Commission upholds her claim in full. While a more limited recovery than is available in the plaintiffs forum of choice does not automatically make the alternative forum inadequate, we fail to see how an alternative forum in which the plaintiff can recover nothing for a valid claim may also be deemed adequate. In other words, it would be peculiar indeed to dismiss Nemariam's claim in the United States District Court – a forum in which, assuming the court has jurisdiction, she is certain to be awarded full relief if she wins on the merits of her claim – in favor of a forum in which she has no certainty of getting any relief for a meritorious claim.

We conclude that the Commission's inability to make an award directly to Nemariam, and Eritrea's ability to set off Nemariam's claim, or an award to Eritrea based upon her claim, against claims made by or an award in favor of Ethiopia, render the Commission an inadequate forum; the "remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all." *Piper*, 454 U.S. at 254. In so saying, we recognize that the decision is a close one, particularly in the light of our limited standard of

review and the district court's observation, with which we agree, that there is nothing in the record to suggest the plaintiffs' awards will be set off against debts owed by Eritrea to Ethiopia. Neither, however, is there any legal barrier to such a set off.

III. Conclusion

Because we conclude that the district court abused its discretion in determining that the Commission was an adequate alternative forum we do not reach Nemariam's other arguments. For the foregoing reasons, the judgment of the district court dismissing this case on the ground of *forum non conveniens* is

Reversed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HIWOT NEMARIAM, et al.	)	
Plaintiffs,	)	
v.	)	
	)	Civil Action No. 00-1392
	)	(TPJ)
	)	[Stamped]
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, et al.,	)	
Defendants.	)	

MEMORANDUM AND ORDER

Plaintiffs bring this action pursuant to the Foreign Sovereign Immunities Act ("FSIA") against the Federal Democratic Republic of Ethiopia and the Commercial Bank of Ethiopia ("CBE") on behalf of themselves and all other persons of Eritrean origin who were allegedly expelled from Ethiopia on or about June 12, 1998 and whose properties were expropriated by the defendants. Plaintiffs assert jurisdiction under the international takings exception to the FSIA, 28 U.S.C. § 1605(a)(3). The matter is presently before the Court on the motion of defendants to dismiss the complaint.

I.

The events giving rise to the case all occurred in the country of Ethiopia and resulted from the long-standing tension between Ethiopia and its neighbor Eritrea. In 1993, following thirty years of conflict, Eritrea seceded peacefully from Ethiopia through a referendum on

independence supervised by the United Nations, and in May, 1993, Eritrea was admitted as a member of the U.N. Although Eritrea's secession was peaceful, the border between the two countries was never clearly demarcated. In May, 1998, a dispute over frontier land erupted into a violent border clash that escalated into a general armed conflict. The events of the instant case occurred shortly thereafter, and the parties' contentions are sharply in controversy.

According to the plaintiffs, starting in June, 1998, Ethiopia began a campaign of identifying, detaining and expelling persons of Eritrean descent, including the plaintiffs. On June 12. 1998, the Ethiopian government issued an order freezing the bank accounts of persons of Eritrean descent. Ethiopia's Immigration Office assembled lists of "Eritreans" based on birth in Eritrea, membership in Eritrean organizations, or voting / eligibility to vote in the 1993 Eritrean referendum on independence. Anyone appearing on those lists was classified as an "Eritrean" and could no longer claim Ethiopian citizenship. The named plaintiffs were stripped of their Ethiopian citizenship, expelled from Ethiopia, and their property was expropriated solely on the ground that they are of Eritrean descent or nationality. Both the U.S. and the U.N. condemned the mass expulsion of "Eritreans."

Prior to June 12, 1998, the named plaintiffs allege that they held bank accounts with the Commercial Bank of Ethiopia. Plaintiffs assert that CBE has prevented plaintiffs from accessing their bank accounts as a result of the Ethiopian government's order of June 12, 1998. Because Ethiopian banking regulations permit withdrawal of funds only when a passbook is presented in person by the account holder, plaintiffs contend that all personal accounts were de facto expropriated as a result of plaintiffs' expulsion from Ethiopia.[1] According to

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[1] Plaintiffs say that defendant CBE is an agent or instrumentality of Ethiopia. It was established in 1964 by an official proclamation of the Ethiopian government, acquired a commercial banking monopoly by 1974,

plaintiffs, all "Eritreans" who had bank accounts have been deprived of access to them. The Ethiopian government also allegedly seized other property and subsequently auctioned it off for the benefit of the CBE and the government, without compensation to plaintiffs. The above actions were only taken against "Eritreans," not any other ethnic or political group.

On June 18, 2000, Ethiopia and Eritrea signed a cease fire agreement, and on December 12, 2000, they signed a peace agreement formally ending the conflict and setting up a claims commission (the "Claims Commission") to hear claims for loss, damage, or injury arising out of the conflict.[2]

II.

Defendants filed a motion to dismiss on November 17, 2000. Defendants dispute many of the factual allegations of the complaint. Defendants allege that during the hostilities both Ethiopia and Eritrea took steps to identify persons within their borders who were considered dangerous because of their political activity and / or support for the other country's war efforts. Defendants contend that people of Eritrean origin may and do continue

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and currently accounts for approximately 90% of all commercial banking activities in Ethiopia.

[2] In their two-count complaint filed on June 27, 2000, the named plaintiffs, four Eritreans expelled from Ethiopia in 1998, assert that these actions amount to a taking in violation of international law and a taking in conjunction with mass expulsions. Plaintiffs filed their First Amended Complaint on June 8, 2001 adding two plaintiffs-one named and one listed as "John A." On that same date, plaintiffs also filed a motion for John A. to proceed anonymously.

Plaintiffs seek to represent a purported class of 70,000 that would consist of persons whose bank accounts and other property in Ethiopia have been expropriated in violation of international law and (1) who are of Eritrean origin, descent, or nationality, or (2) whom Ethiopia otherwise treated as Eritrean.

to live peacefully in Ethiopia and that those who were expelled were spying for Eritrea or otherwise supporting Eritrean aggression. Defendants contend that the Ethiopian government has never issued an order freezing the bank accounts of all persons of Eritrean origin nor has CBE taken any action to freeze accounts belonging to Eritreans. Defendants submit an affidavit from the Legal Counselor for the CBE concerning the status of various CBE bank accounts of the named plaintiffs, noting that they are not frozen and can be accessed by the holders or their personal representatives. *See* Defs' Ex. A, ¶ 26.

Irrespective of the truth or falsity of the plaintiffs' allegations, however, defendants argue that the case should be dismissed because: (1) the expropriation exception to the FSIA does not apply; (2) defendants lack sufficient minimum contacts with the forum for personal jurisdiction; (3) the act of state doctrine requires dismissal of the complaint; (4) the complaint should be dismissed for forum non conveniens; and (5) the Court should abstain from entertaining this action because of the ongoing peace process and negotiations. The abstention argument is now moot because the peace negotiations have been completed.

Plaintiffs filed their opposition on February 16, 2001, contending that subject matter jurisdiction is proper under the FSIA, that personal jurisdiction is not necessary, that the doctrine of forum non conveniens is not apposite, and that the act of state doctrine does not apply.

III.

The Court observes that jurisdictional facts in this case are in dispute; thus a decision as to whether the Court has subject matter jurisdiction is premature.[3] The D.C.

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[3] 'Similarly, a decision as to personal jurisdiction; which under the FSIA is linked to subject matter jurisdiction, is also premature. See 28 U.S.C. §1330.

Circuit has held that a trial court should "consider other potentially dispositive jurisdictional defenses before allowing FSIA discovery." In re Papandreou, 139 F.3d 247, 254 (D.C. Cir. 1998). Forum non conveniens is a potentially dispositive jurisdictional defense; the act of state doctrine is not. See id.

As the Supreme Court has noted, "[t]he *forum non conveniens* determination is committed to the sound discretion of the trial court." Piper Aircraft Co. v. Reyno 454 U.S. 235, 257 (1981). A district court may dismiss a case on the ground of forum non conveniens

> when an alternative forum has jurisdiction to hear a case, and when trial in the chosen forum would "establish ... oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience," or when the "chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems."

Id. at 241 (quoting Koster v. Lumbermens Mut. Cas. Co., 330 U.S. 518, 524 (1947)) (omissions in original). Courts generally balance the interests of plaintiffs, defendants, and the court in an effort to weigh the relative convenience of the chosen forum against the convenience of an alternative forum that also has jurisdiction over the parties and the subject matter of the suit.

In deciding a forum non conveniens motion, courts in the D.C. Circuit apply a four-part test. See Pain v. United Technologies Corp., 637 F.2d 775, 784-85 (D.C. Cir. 1980). First, the court determines whether an adequate alternative forum exists. "Ordinarily, this requirement will be satisfied when the defendant is 'amenable to process' in the other jurisdiction." Piper, 454 U.S. at 254 n.22 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506-07 (1947)). "A foreign forum is not inadequate merely because it has less favorable

substantive law, because it employs different adjudicative procedures, or because of general allegations of corruption in the judicial system." El-Fadl v. Central Bank of Jordan, 75 F.3d 668, 678 (D.C. Cir. 1996) (internal citations omitted). In rare situations, however, when "the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative." Piper, 454 U.S. at 254 n.22. The defendant "bears the burden of proving that there is an adequate alternative forum." El-Fadl, 75 F.3d at 677.

Second, if the court concludes that an adequate alternative forum exists, it weighs a number of "private interests factors" to determine whether the relative convenience of the alternative forum overrides the general presumption in favor of plaintiff's choice of forum, a presumption that is diminished in a case involving foreign plaintiffs. See Piper, 454 U.S. at 256 ("Because the central purposes of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference.") The private interest factors of the litigants include:

> the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Gilbert, 330 U.S. at 508.

Third, if the private interests are in "equipoise or near equipoise," the court considers several "public interest factors" to determine whether the public interest would be served by allowing the case to go forward in the alternative forum. These public interest factors include:

> the administrative difficulties flowing from court congestion; the "local interest in having localized controversies decided at home"; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Piper, 454 U.S. at 241 n.6 (quoting Gilbert, 330 U.S. at 509).

Fourth, if the court concludes that the alternative forum is adequate and the private and public interests weigh in favor of the alternative forum, the court must ensure that the plaintiffs would be able to "reinstate their suit in the alternative forum without undue inconvenience or prejudice." Pain, 637 F.2d at 785.

Defendants argue that the case should be dismissed on forum non conveniens grounds in favor of the international Claims Commission established by Ethiopia and Eritrea to decide the economic claims of individuals in both countries resulting from the dislocations and fighting between 1998 and 2000. It is clear to the Court that the Claims Commission is an adequate alternative tribunal that is more convenient and capable of handling the claims in this case.

The Claims Commission was established under Article 5 of the December 12, 2000 Agreement Between the Government of the Federal Democratic Republic of Ethiopia and the Government of Eritrea (the "Peace Agreement"). Article 5 provides that:

> [t]he mandate of the Commission is to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party

> against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.

Art. 5, ¶ 1. The Commission consists of five arbitrators: two were selected by each country and the fifth was selected by the other four. The five chosen arbitrators all are extremely distinguished international law specialists with experience in human rights law and international claims commissions. See Yimer Decl., Ex. 7. The Commission is located in the Hague and is empowered to employ its own professional staff and adopt its rules of procedure based on the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. See Art. 5, ¶ 5-7. The Commission is also empowered to hold hearings and investigations in the territory of Ethiopia or Eritrea or other locations. See Art. 5, ¶ 5.

Claims shall be submitted to the Commission by each country on its own behalf and on behalf of its nationals, and "[i]n appropriate cases, each party may file claims on behalf of persons of Ethiopian or Eritrean origin who may not be its nationals. Such claims shall be considered by the Commission on the same basis as claims submitted on behalf of that party's nationals." Art. 5, ¶ 9. The claims of the plaintiffs in this case can all be brought by Eritrea: all of the plaintiffs are "persons of Ethiopian or Eritrean origin," and three of the named plaintiffs state that they are now citizens of Eritrea. All claims must be filed no later than December 12, 2001, which allows plaintiffs

sufficient time to present their claims to Eritrea for filing. See Art. 5, ¶ 8.

Plaintiffs contend that Claims Commission expressly contemplates allowing the instant claims to proceed before this Court, and it should therefore do so. The Agreement provides that:

> [e]xcept for claims submitted to another mutually agreed settlement mechanism in accordance with paragraph 16 or filed in another forum prior to the effective date of this Agreement, the Commission shall be the sole forum for adjudicating claims described in paragraph 1 or filed under paragraph 9 of this article, and any such claims which could have been and were not submitted by that deadline shall be extinguished, in accordance with international law.

Art. 5, ¶ 8 (emphasis supplied). Although the claims in this case were "filed in another forum [i.e., this District Court] prior to the effective date of this Agreement," the Agreement does not preclude plaintiffs' claims from being re-filed with the Commission. The Agreement simply admits of concurrent jurisdiction-it does not render this Court an exclusive forum for them.

The Commission is authorized to adopt methods of efficient case management and mass claims processing that it deems appropriate. See Art. 5, ¶ 10. The Commission has already commenced its work, holding an initial meeting with both sides on March 27, 2001, asking for submission of the parties' positions on various issues, and setting future dates. See Yimer Decl., Ex. 10. Eritrea has submitted a letter to the Commission indicating its intent to prepare tens of thousands of claims addressing, among other issues, the deportation and denationalization of Ethiopian citizens due to their Eritrean origins, and the seizure and misappropriation of civilian and government-owned property. See Yimer Decl. Ex. 11;

Brilmayer Decl. ¶ 21. These claims would encompass the claims at issue in this case. Eritrea has also stated its position that "Ethiopian citizens of Eritrean ethnic or national origin who were illegally denationalized, deported, and expelled from Ethiopia must be ensured the right to return to their homes in order to claim their property. Documentation which was systematically seized upon the injured parties' unlawful imprisonment and expulsion must be returned to them immediately in order to facilitate processing of their claims." See Yimer Decl. Ex. 11.

The plaintiffs contest the availability and object to the adequacy of the Claims Commission on the grounds that, as a global settlement of these issues, individuals may not have the opportunity to fully assert their claims; the claims are asserted by the respective governments, so it is at Eritrea's discretion whether to espouse any particular individual's claim.[4] The Court observes that each government has no incentive not to espouse as many meritorious claims as possible before the Commission. Plaintiffs also argue that Eritrea will likely prioritize human rights claims, and that "claims of purely financial injuries, including the taking of property, will be given less emphasis." See Brilmayer Decl. at ¶33. However, Eritrea has "stated its intention to pursue the claims of individuals expelled and denationalized by Ethiopia, as well as claims of taking of property, requesting financial compensation and other relief." See id. at ¶21. Plaintiffs also express concern that any settlement might be in the form of a set-off between the two countries, but they point to nothing in the record to suggest that the Commission contemplates a "set off" remedy.

The government of Eritrea is represented before the Claims Commission by a member of a well-respected

[4] An analogous concern about individual representation, however, could be raised with respect to the Rule 23 class representation plaintiffs propose for themselves before this Court.

United States law firm on boundary issues and by a Yale Law School professor, Lea Brilmayer, and her deputy on claims procedures. Arguments that counsel is inadequate appear to be misplaced. Plaintiffs argue that Eritrea (and its counsel) lack sufficient resources to adequately present the claims and in particular lack the resources of plaintiffs' counsel to pursue the claims at issue in the instant case. This Court is unaware of anything in the Peace Agreement or Claims Commission procedures that would prevent counsel in the instant case from assisting Professor Brilmayer and her team in working on claims to present to the Claims Commission.

Defendants have demonstrated that the Claims Commission is an adequate alternative forum. Even if compensation under the Claims Commission proves different than it might be in a U.S. court, this is not a case where the "remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all." Piper, 454 U.S. at 254.

Once defendants have established that there is an adequate alternative forum, this Court examines whether the private and public interest factors set forth by the Supreme Court in Gilbert favor resolution of these claims in this Court or in the alternative forum. The factors weigh decisively in favor of the Claims Commission.

Private interest factors to be considered include access to sources of proof, availability of compulsory process, cost of obtaining witnesses, possibility of viewing the premises, and other miscellaneous problems with the chosen forum. See Gilbert, 330 U.S. at 508. All of the events at issue in this case occurred in Ethiopia, and the vast majority of plaintiffs, witnesses, and evidence are located in Eritrea and / or Ethiopia. None of the named plaintiffs is a U.S. citizen, and only one is a lawful permanent resident. The potential witnesses located abroad are not likely to be subject to

compulsory process from this Court, and the cost of bringing witnesses and evidence to this country and arranging for translators would be substantial. The Claims Commission, on the other hand, can hold hearings in Eritrea and / or Ethiopia, and will already be making appropriate logistical arrangements for taking evidence situated within, and for coping with language differences.

Public interest factors include administrative difficulties for the courts, local interest in having local controversies decided at home, and familiarity with the substantive law governing the case. See Gilbert, 330 U.S. at 508-509. As noted above, the location of witnesses and evidence and the need for translators would pose serious administrative problems for this Court, and would entail significant expense in trying the case here. The District of Columbia as an entity has no interest in the case-none of the parties is a citizen of the U.S. or resident of this district, and the events at issue in this case are in no way "local" to either D.C. or the United States.[5] The law to be applied in this case is substantive international law, a source of law that the U.S. District Courts do not apply on a regular basis. In contrast, the Claims Commission is specifically charged with applying the relevant rules of international law, see Art. 5, ¶ 13, and all of the commissioners have extensive experience in the field. Moreover, they will already be examining the specific problems at issue in this case and possess experience in handling mass claims.

For the foregoing reasons, the Court concludes that this case should be dismissed on forum non conveniens grounds in favor of the Claims Commission in the Hague, and it is, this 2nd day of August, 2001,

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[5] At this stage, whether some potential class members are U.S. citizens or D.C. residents is irrelevant. None of the named plaintiffs is either.

ORDERED, that defendants' motion to dismiss the complaint is granted; and it is

FURTHER ORDERED, that the case is dismissed without prejudice in favor of the Claims Commission in the Hague as an alternative forum; and it is

FURTHER ORDERED, that the case is subject to reinstatement for good cause shown if named plaintiffs' claims are not submitted to the Claims Commission by the government of Eritrea despite affirmative, timely request therefore by plaintiffs; and it is

FURTHER ORDERED, that plaintiffs' motion for John A. to proceed anonymously is denied as moot.

/s / Thomas Penfield Jackson

U.S. District Judge

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-7142 **September Term, 2002**
00cv01392

Hiwot Nemariam, et al.,
Appellants

Filed On: April 18, 2003
[Stamped]

v.

The Federal Democratic Republic of Ethiopia and The Commercial Bank of Ethiopia,
Appellees

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, and Garland, Circuit Judges, and Williams, Senior Circuit Judge

ORDER

Upon consideration of appellees' petition for rehearing en banc, the opposition thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY:
/s/ Michael C. McGrail
Deputy Clerk

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE FEDERAL

DEMOCRATIC REPUBLIC OF ETHIOPIA

AND

THE GOVERNMENT OF THE

STATE OF ERITREA

The Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea (the "parties"),

Reaffirming their acceptance of the Organization of African Unity ("OAU") Framework Agreement and the Modalities for its Implementation, which have been endorsed by the 35th ordinary session of the Assembly of Heads of State and Government, held in Algiers, Algeria, from 12 to 14 July 1999,

Recommitting themselves to the Agreement on Cessation of Hostilities, signed in Algiers on 18 June 2000,

Welcoming the commitment of the OAU and United Nations, through their endorsement of the Framework Agreement and Agreement on Cessation of Hostilities, to work closely with the international community to mobilize resources for the resettlement of displaced persons, as well as rehabilitation and peace building in both countries,

Have agreed as follows:

Article 1

1. The parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against the other.

2. The parties shall respect and fully implement the provisions of the Agreement on Cessation of Hostilities.

Article 2

1. In fulfilling their obligations under international humanitarian law, including the 1949 Geneva Conventions relative to the protection of victims of armed conflict ("1949 Geneva Conventions"), and in cooperation with the International Committee of the Red Cross, the parties shall without delay release and repatriate all prisoners of war.

2. In fulfilling their obligations under international humanitarian law, including the 1949 Geneva Conventions, and in cooperation with the International Committee of the Red Cross, the parties shall without delay, release and repatriate or return to their last place of residence all other persons detained as a result of the armed conflict.

3. The parties shall afford humane treatment to each other's nationals and persons of each other's national origin within their respective territories.

Article 3

1. In order to determine the origins of the conflict, an investigation will be carried out on the incidents of 6 May 1998 and on any other incident prior to that date which could have contributed to a misunderstanding between the parties regarding their common border, including the incidents of July and August 1997.

2. The investigation will be carried out by an independent, impartial body appointed by the Secretary General of the OAU, in consultation with the Secretary General of the United Nations and the two parties.

3. The independent body will endeavor to submit its report to the Secretary General of the OAU in a timely fashion.

4. The parties shall cooperate fully with the independent body.

5. The Secretary General of the OAU will communicate a copy of the report to each of the two parties, which shall consider it in accordance with the letter and spirit of the Framework Agreement and the Modalities.

Article 4

1. Consistent with the provisions of the Framework Agreement and the Agreement on Cessation of Hostilities, the

parties reaffirm the principle of respect for the borders existing at independence as stated in resolution AHG/Res. 16(1) adopted by the OAU Summit in Cairo in 1964, and, in this regard, that they shall be determined on the basis of pertinent colonial treaties and applicable international law.

2. The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law. The Commission shall not have the power to make decisions *ex aequo et bono*.

3. The Commission shall be located in The Hague.

4. Each party shall, by written notice to the United Nations Secretary General, appoint two commissioners within 45 days from the effective date of this Agreement, neither of whom shall he nationals or permanent residents of the party making the appointment. In the event that a party fails to name one or both of its party-appointed commissioners within the specified time, the Secretary General of the United Nations shall make the appointment.

5. The president of the Commission shall be selected by the party-appointed commissioners or, failing their agreement within 30 days of the date of appointment of the latest party-appointed commissioner, by the Secretary General of the United Nations after consultation with the parties. The president shall be neither a national nor permanent resident of either party.

6. In the event of the death or resignation of a commissioner in the course of the proceedings, a substitute commissioner shall be appointed or chosen pursuant to the procedure set forth in this article that was applicable to the appointment or choice of the commissioner being replaced.

7. The UN Cartographer shall serve as Secretary to the Commission and undertake such tasks as assigned to him by the Commission, making use of the technical expertise of

the UN Cartographic Unit. The Commission may also engage the services of additional experts as it deems necessary.

8. Within 45 days after the effective date of this Agreement, each party shall provide to the Secretary its claims and evidence relevant to the mandate of the Commission. These shall be provided to the other party by the Secretary.

9. After reviewing such evidence and within 45 days of its receipt, but not earlier than 15 days after the Commission is constituted, the Secretary shall transmit to the Commission and the parties any materials relevant to the mandate of the Commission as well as his findings identifying those portions of the border as to which there appears to be no dispute between the parties. The Secretary shall also transmit to the Commission all the claims and evidence presented by the parties.

10. With regard to those portions of the border about which there appears to be controversy, as well as any portions of the border identified pursuant to paragraph 9 with respect to which either party believes there to be controversy, the parties shall present their written and oral submissions and any additional evidence directly to the Commission, in accordance with its procedures.

11. The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. Filing deadlines for the parties' written submissions shall be simultaneous rather than consecutive. All decisions of the Commission shall be made by a majority of the commissioners.

12. The Commission shall commence its work not more than 15 days after it is constituted and shall endeavor to make its decision concerning delimitation of the border

within six months of its first meeting. The Commission shall take this objective into consideration when establishing its schedule. At its discretion, the Commission may extend this deadline.

13. Upon reaching a final decision regarding delimitation of the borders, the Commission shall transmit its decision to the parties and Secretaries General of the OAU and the United Nations for publication, and the Commission shall arrange for expeditious demarcation.

14. The parties agree to cooperate with the Commission, its experts and other staff in all respects during the process of delimitation and demarcation, including the facilitation of access to territory they control. Each party shall accord to the Commission and its employees the same privileges and immunities as are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

15. The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party.

16. Recognizing that the results of the delimitation and demarcation process are not yet known, the parties request the United Nations to facilitate resolution of problems which may arise due to the transfer of territorial control, including the consequences for individuals residing in previously disputed territory.

17. The expenses of the Commission shall be borne equally by the two parties. To defray its expenses, the Commission may accept donations from the United Nations Trust Fund established under paragraph 8 of Security Council Resolution 1177 of 26 June 1998.

Article 5

1. Consistent with the Framework Agreement, in which the parties commit themselves to addressing the negative socio-economic impact of the crisis on the civilian population, including the impact on those persons who have been deported, a neutral Claims Commission shall be established. The mandate of the Commission is to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law. The Commission shall not hear claims arising from the cost of military operations, preparing for military operations, or the use of force, except to the extent that such claims involve violations of international humanitarian law.

2. The Commission shall consist of five arbitrators. Each party shall, by written notice to the United Nations Secretary General, appoint two members within 45 days from the effective date of this Agreement, neither of whom shall be nationals or permanent residents of the party making the appointment. In the event that a party fails to name one or both of its party-appointed arbitrators within the specified time, the Secretary General of the United Nations shall make the appointment.

3. The president of the Commission shall be selected by the party appointed arbitrators or, failing their agreement within 30 days of the date of appointment of the latest party-appointed arbitrator, by the Secretary General of the United

Nations after consultation with the parties. The president shall be neither a national nor permanent resident of either party.

4. In the event of the death or resignation of a member of the Commission in the course of the proceedings, a substitute member shall be appointed or chosen pursuant to the procedure set forth in this article that was applicable to the appointment or choice of the arbitrator being replaced.

5. The Commission shall be located in The Hague. At its discretion it may hold hearings and conduct investigations in the territory of either party, or at such other location as it deems expedient.

6. The Commission shall be empowered to employ such professional, administrative and clerical staff as it deems necessary to accomplish its work, including establishment of a Registry. The Commission may also retain consultants and experts to facilitate the expeditious completion of its work.

7. The Commission shall adopt its own rules of procedure based upon the 1992 Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two States. All decisions of the Commission shall be made by a majority of the commissioners.

8. Claims shall be submitted to the Commission by each of the parties on its own behalf and on behalf of its nationals, including both natural and juridical persons. All claims submitted to the Commission shall be filed no later than one year from the effective date of this Agreement. Except for claims submitted to another mutually agreed settlement mechanism in accordance with paragraph 16 or filed in another forum prior to the effective date of this Agreement, the Commission shall be the sole forum for adjudicating claims described in paragraph 1 or filed under paragraph 9 of this article, and any such claims which could

have been and were not submitted by that deadline shall be extinguished, in accordance with international law.

9. In appropriate cases, each party may file claims on behalf of persons of Ethiopian or Eritrean origin who may not be its nationals. Such claims shall be considered by the Commission on the same basis as claims submitted on behalf of that party's nationals.

10. In order to facilitate the expeditious resolution of these disputes, the Commission shall be authorized to adopt such methods of efficient case management and mass claims processing as it deems appropriate, such as expedited procedures for processing claims and checking claims on a sample basis for further verification only if circumstances warrant.

11. Upon application of either of the parties, the Commission may decide to consider specific claims, or categories of claims, on a priority basis.

12. The Commission shall commence its work not more than 15 days after it is constituted and shall endeavor to complete its work within three years of the date when the period or filing claims closes pursuant to paragraph 8.

13. In considering claims, the Commission shall apply relevant rules of international law. The Commission shall not have the power to make decisions *ex aequo et bono.*

14. Interest, costs and fees may be awarded.

15. The expenses of the Commission shall be borne equally by the parties. Each party shall pay any invoice from the Commission within 30 days of its receipt.

16. The parties may agree at any time to settle outstanding claims, individually or by categories, through direct negotiation or by reference to another mutually agreed settlement mechanism.

17. Decisions and awards of the Commission shall be final and binding. The parties agree to honor all decisions and to pay-any monetary awards rendered against them promptly.

18. Each party shall accord to members of the Commission and its employees the privileges and immunities that are accorded to diplomatic agents under the Vienna Convention on Diplomatic Relations.

Article 6

1. This Agreement shall enter into force on the date of signature.

2. The parties authorize the Secretary General of the OAU to register this Agreement with the Secretariat of the United Nations in accordance with Article 102(1) of the Charter of the United Nations.

DONE at Algiers on the twelfth day of December, 2000, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA	FOR THE GOVERNMENT OF THE STATE OF ERITREA
/s/ Meles Zenawi	/s/Isaias Afwerki
Meles ZENAWI Prime Minister	Isaias AFWERKI President

WITNESSED BY:

For the People's Democratic Republic of Algeria
Abdelaziz BOUTEFLIKA, President of the Republic

/s/ Abdelaziz Bouteflika

For the United States of America
Mme Madeleine K. ALBRIGHT, Secretary of State

/s/ Mme. Madeleine K. Albright

For the United Nations
M. Kofi ANNAN, Secretary General

/s/ M. Kofi Annan

For the Organization of African Unity
M. Salim Ahmed Salim, Secretary General
/s/ M. Salim Ahmed Salim

For the European Union
M. Rino SERRI, Special Representative of the Presidency.

/s/ M. Rino Serri

Call to the International Community

On December 12, 2000, the international community has witnessed a particularly important event: the signature of a peace agreement between Ethiopia and Eritrea which puts an end to a deadly conflict that has divided, for the last two years, these two brotherly and neighboring countries.

This conflict, now ended, has caused thousands of casualties, the destruction of infrastructure and assets, and dramatic consequences for hundreds of thousands of displaced people.

This destructive war, with all of its tragic effects, has come to an end, thanks to the will, the wisdom and the spirit of compromise demonstrated by the leaders of these two brotherly countries which have managed, with the resolute and persevering support of the O.A.U. and its partners, to transcend their differences and to step forward resolutely on an irreversible drive toward peace.

In the face of this positive development and the hopes generated by the confirmation of this will for peace, the international community should consolidate, with the necessary support and assistance, this historical achievement of peace, so as to create conditions for the rapid and comprehensive implementation of this agreement and to strengthen the two countries efforts toward recovery, reconstruction and development.

In this regard, the international community is urged, at the bilateral or the multilateral level, to demonstrate its effective solidarity toward these two brotherly countries, which have just proved to Africa that only recourse to a peaceful settlement process can end conflict on the African continent.

Transcript: Albright Witnesses Ethiopia-Eritrea Peace Pact Signing
Says progress, peace can be attained in Africa

"Progress is possible ... peace can be attained" in sub-Saharan Africa, Secretary of State Madeleine Albright said December 12 as she witnessed the signing of a peace agreement between Ethiopia and Eritrea.

Speaking in Algiers, the site of the signing ceremony, Albright said: "For years, a chorus of voices has alleged that Africa's problems are hopeless. Here today ... let the message go forth that those voices are wrong."

The United States, she said, is "proud -- not only to have assisted in achieving this agreement, but to have done so in the right way: by supporting the OAU [Organization of African Unity].

"On behalf of President Clinton, I want to extend special thanks to [Algerian] President [Abdelaziz] Bouteflika for his leadership, and to the government of Algeria for its collaboration with the United States in this endeavor.

"It is indicative of President Bouteflika's commitment to peace," she said, "that he continued to provide outstanding leadership well beyond his tenure as OAU chairman. And we are all indebted to him for guiding the process through to today's ceremony."

At the heart of the agreement, Albright said, is the fact that "the two combatants agreed to put their trust in an impartial process that can resolve disputes between them. We must hope that others on this continent will follow the same path of trust and accommodation."

Of course, she added, "the peace we celebrate today is not just a success for international diplomacy," but marks "a success for the two governments and leaders whose wisdom finally brought an end to the conflict. Above all, it is a victory for the people of both countries. And a promise that those who lived through the ravages of war may once again reap the benefits of peace.

"Now it falls to us in the international community to help them do so," she said. "The presence of U.N. Secretary-General Annan is symbolic of this commitment. And the rapid deployment of the U.N. Mission in Ethiopia and Eritrea already gives it practical meaning."

Following is the State Department transcript of Albright's remarks:

(begin transcript)

U.S. DEPARTMENT OF STATE Office of the Spokesman (Algiers, Algeria)

For Immediate Release

Remarks as delivered

Remarks by Secretary of State Madeleine K. Albright Ethiopia-Eritrea Peace Agreement Ceremony Algiers, Algeria

December 12, 2000

President Bouteflika, Prime Minister Meles, President Isaias, Presidents Obasanjo and Eyadema, Secretary-General Annan, Secretary-General Salim, excellencies from the diplomatic corps, guests and friends.

I am grateful to President Bouteflika for his leadership and vision, as well as the invitation to take part in this important ceremony. The Government of Algeria and the Organization of African Unity deserve great praise and recognition for the

crucial role they have played in facilitating this peace agreement.

President Clinton asked me to represent him today, and to convey his congratulations to Prime Minister Meles, President Isaias and President Bouteflika. The President has spoken himself with great sadness about this conflict. And now, in equal measure, he has asked me to tell you of his relief and thankfulness that the peoples of Ethiopia and Eritrea can begin again. To enjoy what he often describes as "the quiet miracle of a normal life."

This is the last stop of what may be my last trip to Africa as Secretary of State. For years, a chorus of voices has alleged that Africa's problems are hopeless. Here today, in this room, and with these signatures, let the message go forth that those voices are wrong; that progress is possible, that peace can be attained.

That is why the United States is proud - not only to have assisted in achieving this agreement -- but to have done so in the right way: by supporting the OAU. On behalf of President Clinton, I want to extend special thanks to President Bouteflika for his leadership, and to the Government of Algeria for its collaboration with the United States in this endeavor.

It is indicative of President Bouteflika's commitment to peace, that he continued to provide outstanding leadership well beyond his tenure as OAU Chairman. And we are all indebted to him for guiding the process through to today's ceremony.

Of course, I would not be here on behalf of the President, if it were not for the critical role of our own team.

First and foremost, I want to thank my friend, the former National Security Advisor, and President Clinton's Special Envoy, Anthony Lake-- for his tireless efforts over more than two years. He has logged countless miles on his peace-

making visits to the region, and to Algeria. His tenacity and generosity in this effort is another example of his selfless commitment to public service.

I also want to especially thank Assistant Secretary of State Susan Rice, National Security Council Senior Director Gayle Smith, and Special Advisor John Prendergast. These individuals, and several others, were a force for peace -- devoting relentless energy, over a great many days and many long nights, to the task of negotiating a settlement.

In the end, an agreement was reached. And the essence of that agreement is what brings us here today. At its heart, the two combatants agreed to put their trust in an impartial process that can resolve disputes between them. We must hope that others on this continent will follow the same path of trust and accommodation.

And, of course, the peace we celebrate today is not just a success for international diplomacy. It is a success for the two governments and leaders whose wisdom finally brought an end to the conflict. Above all, it is a victory for the people of both countries. And a promise that those who lived through the ravages of war, may once again reap the benefits of peace:

Now it falls to us in the international community to help them do so. The presence of U.N. Secretary-General Annan is symbolic of this commitment. And the rapid deployment of the U.N. Mission in Ethiopia and Eritrea already gives it practical meaning. I want to thank the Secretary-General for his personal interest and support of UNMEE.

And say the United States is committed to doing its part -- from supporting landmine clearance to providing development assistance. We will reinvigorate our relations with both nations as a matter of both humanitarian obligation and national interest.

And the friends of Ethiopia and Eritrea will pray that the bitterness of the last two years can be put to rest. That these two governments and peoples can surmount an even greater challenge. They must now find in their hearts the spirit of reconciliation that will allow them to restore their ties, and shape a common future of peace and progress.

From my office in Washington, I see every day a great monument to the spirit of reconciliation. Within the memorial to Abraham Lincoln are inscribed the words of a great American president.

The words call on a people to rebuild from the ashes of war -- to act "with malice toward none; with charity for all ... to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan -- to do all which may achieve and cherish a just and lasting peace."

To the peoples of Ethiopia and Eritrea, I say the hope and promise of this day is yours. May your memories of pain and suffering fade far into the past. And may today's peace last long into your children's future.

(end transcript)

(Distributed by the Office of International Information Programs, U.S. Department of State. Web site: http://usinfo.state.gov)

State of Eritrea
Statement of Claim for Persons Expelled from Ethiopia

A. Names and Addresses of Parties

State of Eritrea
c/o The Ministry of Foreign Affairs Asmara, Eritrea
Correspondence to be addressed to:
Office of the Legal Advisor to the Office of the President
Asmara, Eritrea
Telephone: (291) (1) 20-12-60
Fax: (291) (1) 12-21-42 E-mail: legaladv@eol.com.er

B. Description of Claimant

1. This claim is made by the State of Eritrea on behalf of itself, by virtue of injuries and losses suffered by the State of Eritrea and its nationals (and individuals of Eritrean origin as designated in Article 5, Paragraph 9) resulting from the internment, expulsion, and confiscation of property of Eritrean nationals and Ethiopians of Eritrean extraction and for the denationalization of Ethiopians of Eritrean origin/extraction.

C. Statement of Facts

2. In May 1998, Ethiopia began a policy of mass expulsion of Ethiopians of Eritrean extraction and Eritrean nationals.[1] Since that time more than 110,000 individuals have been expelled from Ethiopia. The majority of these individuals are Ethiopian citizens of Eritrean extraction; the remainder are Eritrean citizens who were legally present in Ethiopia. Most deportations have taken place after periods of

[1] The events surrounding the expulsion of Ethiopians of Eritrean extraction and Eritrean nationals are largely the same and so will be submitted jointly in this Statement of Claim. Ethiopians of Eritrean extraction have an additional claim for denationalization; when the events deal only with Ethiopians of Eritrean extraction, this will be explicitly stated.

imprisonment under deplorable conditions, followed by long, arduous journeys by bus or on foot. In almost every instance the Ethiopians have illegally confiscated the property of those expelled.

Denationalization

3. Ethiopia has made no differentiation between Eritrean nationals and Ethiopian citizens of Eritrean extraction in its policy of expulsion. It has denied the citizenship of individuals of Eritrean extraction based solely on their ethnicity. Ethiopia has gone so far as to mark the Ethiopian passports of some of the individuals it has expelled "deported." There can be little doubt that these people have been denationalized.

Historical Background of the Situation

4. Although the historical and political connections between Ethiopia and Eritrea are long-standing and complex, the legal status of the expelled persons can be appreciated from a summary overview of contemporary history of the region.

5. At the end of World War II, Italy relinquished its colonial territories in Africa, of which Eritrea was one. Pursuant to a UN recommendation, Eritrea was federated with Ethiopia under the sovereignty of the Ethiopian crown. In the early 1960s, however, Ethiopia dissolved the federation and annexed Eritrea as a province, touching off a war of independence that lasted for thirty years. While the war effort originated with Eritreans fighting for independence, they were joined in later years by other Ethiopian groups who sought instead as their primary objective the overthrow of the existing Ethiopian government.

6. These joint efforts were successful in 1991, at which point the Marxist-Leninist regime of Mengistu Haile Mariam was driven from power. A UN-monitored referendum on

Eritrean independence was scheduled for 1993 with the approval of the new Ethiopian government; and it resulted in an overwhelming vote for independence. Since 1993, Eritrea has been an independent state.

7. Because of the many strong cultural, social; linguistic, and religious connections between the two countries - and because for forty years they were part of the same internationally recognized state - there has been constant movement and relocation from Eritrea to Ethiopia proper, and vice versa. Intermarriages are common. Although almost all of the current deportees are "Eritrean" in the sense that their families originated in the part of Ethiopia that achieved independence in 1993, each of these persons was legally a citizen of Ethiopia prior to 1991 for the simple reason that prior to the 1993 referendum no internationally recognized state of Eritrea existed. Furthermore, under Article 6 of the Ethiopian constitution, any person with one or both Ethiopian parents has Ethiopian citizenship by birth.

8. At no point during the independence process was it suggested that persons whose families traced their roots to the Eritrean part of Ethiopia would automatically lose their legal status as Ethiopian citizens simply by virtue of the fact that Eritrea was becoming an independent state. Neither was it ever suggested that the price of participating in the independence referendum was an automatic loss of Ethiopian citizenship. To suggest that voting in the referendum would lead to loss of citizenship would have meant that if the vote had gone against independence, each of the persons voting would have been rendered stateless.

9. The majority of Ethiopians of Eritrean extraction possessed full legal documentation of their Ethiopian citizenship before their arrest, although in some cases their documents were destroyed or confiscated by the authorities during the deportation process. Their documentation included items such as Ethiopian passports, Ethiopian

identity cards, which expressly stated the bearer's citizenship as "Ethiopian," and Ethiopian government business licenses which listed Ethiopian citizenship.

Expulsion

10. The newly denationalized individuals were afforded no process through which to contest their internment, denationalization, or deportation. The treatment of Eritrean nationals was identical. Expellees were forcibly transported to the border directly from detention without having the opportunity to contact families, legal assistance, or international organizations.

11. Most of those deported pose no conceivable threat to security. Included in the numbers of those deported are large numbers of children, infants, and the very elderly.

12. Ethiopian officials often took individuals into custody in the middle of the night. Families were often separated. At times parents who were deported were not allowed to take their children, leaving minor children without caretakers or income. In other instances heads of household were expelled, leaving entire families without income.

13. Almost no one was given an explanation or any form of legal or administrative process. The people who were given explanations were told that they were being expelled for being Eritrean, even while their Ethiopian identity documents were being cancelled in front of them.

14. In many instances, those being expelled spent long days on buses without food, water, or sanitary facilities. They were then most often left in the no-man's-land between the Ethiopian and Eritrean front lines. They were forced to walk long distances, often in intense heat, into the front lines of the Eritreans. The Eritrean authorities were rarely informed that civilians would be crossing the lines. In at least

one instance, the Ethiopian troops fired over the heads of the civilians as they walked toward the Eritrean front lines. By happy circumstance, an Eritrean soldier heard a child crying, realized what was happening, and prevented the Eritrean soldiers from returning fire.

Detention

15. With the exception of some rural expellees who were marched directly across the border, the expellees were arrested by Ethiopian security personnel and jailed in Ethiopian prisons, police stations, and detention camps prior to their expulsions.

16. Conditions in detention in Ethiopia were dismal. Ethiopian authorities did not provide adequate food or water. In most instances individuals were forced to buy or beg for food and water from the local population or other prisoners. They had little or no access to sanitary facilities. Civilian prisoners were not provided with medical attention.

17. Individuals were at times held in metal shipping containers for weeks prior to expulsion. At other times, individuals were beaten in an attempt to make them forswear their Ethiopian citizenship.

Illegal Confiscation of Property

18. Ethiopia has illegally confiscated the property of the persons it has forcibly expelled. All types of property have been seized. Some examples of confiscated property include houses, bank accounts, farms, commercial trucks, cars, pensions, businesses, commercial real estate, and equipment. Ethiopia also confiscated personal documents such as identity documents, business records, tax records, diplomas, and marriage certificates.

19. Even in instances where the property was not outright confiscated, the summarily expelled persons were forced to abandon property. Lucky expellees were allowed to take a

suitcase full of clothes. Most were not allowed to take anything.

20. Ethiopia makes no secret of these confiscations; in November 1999, for example, the Ethiopian government publicly announced that it would auction 85.7 million Birr worth of property belonging to victims of its policy of forcible expulsion.

21. Ethiopia's arbitrary expulsion of individuals has devastated entire families. Many individuals who were expelled find themselves in an unfamiliar country, where many do not even speak the language. Many have been forced to leave their spouses and/or children behind. All have lost their citizenship, their homes, and their property.

D. Violations of International Law

22. Ethiopia's policy of ethnic expulsion is itself is a violation of international law. The manner in which Ethiopia executes this illegal policy - with denationalization, lack of due process, physical and mental abuse, separation of families, illegal detention under appalling conditions, and mass confiscation of property - violates all norms of international humanitarian law.

Illegal Expulsion

23. Ethiopia does not deny that it has engaged in widespread expulsions of ethnic Eritreans. On 9 July 1998, Prime Minister Meles Zenawi defended this policy on Radio Ethiopia by stating: "If we say, `Go, because we do not like the colour of your eyes,' they have to leave." Its strategy for defending its policy of forcible expulsion of ethnic Eritreans has been to deny that the ethnic Eritreans that it is expelling are Ethiopian citizens. Given that Ethiopia has signed human rights instruments explicitly prohibiting ethnically motivated expulsions even of aliens, this defense is beside the point. Moreover, Ethiopia cannot reface its forcible expulsions of its ethnically Eritrean

citizens by depriving them of their citizenship. This denationalization of its citizens is itself an independent violation of international law.

Expulsion of Eritrean Nationals

24. Ethiopia has engaged in the illegal mass expulsion of Eritrean nationals. The overwhelming number of those expelled were Ethiopian citizens; however, the masses of those expelled also included Eritrean nationals. International human rights law applicable to Ethiopia prohibits mass expulsion regardless of the nationality of the victims.

25. The Organization of African Unity's African Charter on Human and Peoples' Rights (to which Ethiopia is a party) provides in Article 12(5) that:

> The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial ethnic or religious groups.

26. The International Covenant on Civil and Political Rights (which Ethiopia ratified in 1993) provides in Article 13 that an alien may be expelled "only in pursuance of a decision reached in accordance with law." Official commentary to this article explicitly states that "in accordance with law" means pursuant to an individualized decision of deportability:

> Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions.[2]

27. The collective expulsion of aliens has also been prohibited in other regional human rights instruments, such

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[2] UN Doc. A/41/40, Annex VI, paras. *9-10 (1986). See also* Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary *226 (1993).*

as the European Convention on Human Rights and the American Convention on Human Rights.

28. Article 35 of Geneva Convention No. IV[3] states:

> All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so....

The official commentary explains this language as follows:

> The words "who may desire to leave the territory" show quite clearly that the departure of the protected persons concerned will take place only if they wish to leave .... [T]he idea is implicit in the text actually adopted, although it is expressed somewhat differently. The point is an important one, for may foreign civilians do not which to leave a country where they have lived for many years and to which they are attached.[4]

29. Thus, even if Ethiopia were correct that it can avoid the prohibitions on expulsions of one's own nationals by first denationalizing its citizens of Eritrean origin or extraction, its activities would nonetheless be illegal mass expulsion.

Prohibitions on Expulsion of Nationals

30. Ethiopia has engaged in the illegal mass expulsion of Ethiopian nationals of Eritrean extraction. The prohibitions on denationalization or expulsion of a State's own citizens are even more firmly entrenched than those prohibiting mass expulsion of aliens. International human rights treaties expressly prohibit the expulsion of nationals.

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[3] Geneva Convention (No. IV) Relative to the Protection of Civilian Persons in Time of War (12 August 1949, entered into force 21 October 1950) (hereafter "Geneva Convention No. IV").

[4] Commentary Article 35 Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, *as available at* <hgp:www.icrc.org/ihl.nsf>.

31. Article 13, paragraph 2, of the Universal Declaration of Human Rights (hereafter "UDHR") provides:

> Everyone has the right to leave any country, including his own, and to return to his country.[5]

Article 9 further states that no one shall be subject to exile.

32. The International Covenant on Civil and Political Rights (hereafter "ICCPR"), to which Ethiopia acceded in 1993, states:

> No one shall be arbitrarily deprived of the right to enter his own country.[6]

This right has also been enshrined in regional human rights instruments from Africa, Europe, and the Americas.[7] For

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[5] Universal Declaration of Human Rights, G.A. Res. 217A, UN GAOR, 3rd Sess., Pt. I, Resolutions, at 71, UN Doc. A/810 (adopted by UN General Assembly, 10 December 1948) (hereafter "UDHR"), Article 13(2) (emphasis added).

[6] International Covenant on Civil and Political Rights (16 December 1966, entered into force 23 March 1976) (hereafter "ICCPR"), Article 12.

[7] African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 Rev. 5 (26 June 1981, entered into force 21 October 1986), *reprinted in* 21 I.L.M. 59 (1982) (hereafter "African Charter"), Article 12(2); Protocol No. 4 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those included in the Convention and in Protocol No. 1 (as amended by Protocol No. 11) (16 September 1963, entered into force 2 May 1968), Article 3; American Convention on Human Rights, 1144 U.N.T.S. 123, O.A.S.T.S. No. 36 (22 November 1969, entered into force 18 July 1978), Article 22(5); American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX (1948), Article VIII. In addition, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (7 March 1966, entered into force 4 January 1969) (hereafter "CERD"), which Ethiopia ratified in 1981, provides that the denial of the right to return is a violation of international human rights law if it is applied on discriminatory grounds.

example, Article 12(5) of the African Charter on Human and Peoples' Rights (hereafter "African Charter") mirrors the language of Article 13 of the UDHR.

33. International legal scholarship confirms that a state may not under any circumstances deport or expel its own nationals. Since World War 11:

> [I]t [has been] a firmly established rule of international law that a State may not expel or deport its own nationals.[8]

34. The statute establishing the new International Criminal Court, as well as the statutes establishing war crimes tribunals for the former Yugoslavia and Rwanda, provide that those responsible for deportations or forcible transfers are subject to individual criminal liability.

Violations of Procedural Fairness

35. Ethiopia violated international law when it failed to provide any form of legal or administrative process in the act of expelling ethnic Eritreans and Eritrean nationals. The applicable international human rights instruments explicitly provide that a decision to expel persons (even persons who, unlike the ethnic Eritreans, are not citizens of the State from which they are expelled) must be made in accord with legitimate procedures. Ethiopia violated these laws when it arrested, detained, and expelled individuals without any procedural or administrative process.

36. Article 9 of the UDHR states:

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[8] Louis B. Sohn & Thomas Buergenthal (eds.), THE MOVEMENT OF PERSONS ACROSS BORDERS 85 (1992). *See also* Jean-Marie Henckaerts, *The Current Status and Content of the Prohibition of Mass Expulsion of Aliens, 15* HUMAN RIGHTS L.J. 301 (1994); Remarks of Luke T. Lee, *Human Rights and the Movement of Persons,* American Society of International Law, Proceedings of the 78th Meeting, 342 (1984) (speaking in his personal capacity).

> No one shall be subject to arbitrary arrest, detention, or exile.[9]

37. These protections are spelled out more fully in the ICCPR. Article 9 states:

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his liberty except can such grounds and in accordance with such procedure-,' as are established by law.[10]

Article 9, paragraph 2. of the ICCPR continues:

> Anyone who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him.[11]

Article 9, paragraph 4 of the ICCPR similarly provides:

> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.[12]

Unlawful Confiscation of Property

38. Ethiopia's mass confiscation of property of the individuals it has expelled is directly contrary to international law. Article 17 of the Universal Declaration of Human Rights, for example, explicitly recognizes and protects the right to private property:

> 1. Everyone has the right to own property alone as well as in association with others.

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[9] UDHR, Article 9.
[10] ICCPR, Article 9.
[11] *Id.* Article 9(2).
[12] *Id.* Article 9(4).

> 2. No one shall be arbitrarily deprived of his property.[13]

Article 14 of the African Charter provides a similar protection against arbitrary deprivation of property.[14]

39. International case law also protects the right of private ownership of property. Government taking of property violates international law when it is (i) not for public purpose, or (ii) discriminatory, or (iii) not accompanied by full compensation.[15]

40. The seizure of property is also in violation of Ethiopian domestic law.

Violation of Law Prohibiting Racial or Ethnic Discrimination

41. Ethiopia targeted a particular ethnic group for deportation and expulsion. This violates specific prohibitions on non-discrimination in international law, as exemplified by Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter "CERD").[16]

Protection from Brutal and Degrading Treatment While Detained

42. Ethiopia violated international law when it incarcerated detainees in degrading conditions. Ethiopia violated the following provisions of the Geneva Convention No. IV:

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[13] UDHR, Article 17.

[14] African Charter, Article 14. *See also* Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocol No. 11) (20 March 1952, entered into force 18 May 1954), Article 1.

[15] *The Factory at Chorzow*, P.C.I.J. ser. A, No. 17 (1928).

[16] CERD, Articles 2, 5.

43. Ethiopia violated Article 16 when it incarcerated pregnant women, the ill, and the elderly in deplorable conditions.

44. Ethiopia violated Article 25 when it prevented civilian prisoners from contacting their families and did not notify families of an individual's arrest.

45. Ethiopia violated Article 31 of Geneva Convention (IV) when it subjected civilian detainees to physical and mental abuse.

46. Ethiopia further violated Article 31 when it used torture and death threats in an effort to coerce confessions.

47. Ethiopia violated Articles 84 through 88 when it held civilian detainees in deplorable conditions.

48. Ethiopia violated Articles 89 and 90 when it failed to provide food and clothing to the civilian detainees.

49. Ethiopia violated Articles 91 and 92 when it failed to provide internees with medical attention.

Rights of Children and Families

50. Ethiopia's policy and pattern of deportation has violated international law. The provisions of the Convention on the Rights of the Child (to which Ethiopia acceded in 1991) explicitly protect children from separation from their parents. Article 9 provides:

> States Parties shall ensure that a child shall not be separated from his or her parents against their will ....[17]

51. Article 18 of the African Charter requires States Parties to protect the family as the "natural unit and basis of society."[18] It further requires that States ensure the protection

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[17] Convention on the Rights of the Child, 1577 U.N.T.S. 3 (20 November 1989, entered into force 2 September 1990), Article 9.

[18] African Charter, Article 18 (1).

of the rights of children in accordance with international declarations and conventions.

52. Ethiopia has also violated the law by imprisoning children prior to their deportation, especially when they are not accompanied by any older relative. The Convention on the Rights of the Child, Article 37(b) and (c), provides as follows:

> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time;
>
> Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.[19]

53. Ethiopia is not allowed to derogate from these obligations at any time. including during war or national emergencies.

E. Other Points at Issue

Reserved.

F. Relief or Remedy Sought

54. The State of Eritrea seeks monetary compensation for loss, damage, and injury; interest, costs, and attorneys' fees incurred in bringing this claim; and such other and further relief as is just and proper, including an order that all expellees who have been denationalized have their citizenship reinstated.

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[19] Convention on. the Rights of the Child, Article 37(b)-(c).

G. Jurisdiction

55. This is a proper claim for determination by the Claims Commission, pursuant to Article 5 of the 12 December 2000 Comprehensive Peace Agreement, in that it asserts claims for loss, damage, or injury by the State of Eritrea against the Federal Republic of Ethiopia that: (a) are related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.

56. The foregoing claims fall within the temporal scope of the jurisdiction of the Claims Commission, as the events giving rise to the claims occurred between May 1998 and 12 December 2000; arose as a result of the armed conflict between the parties; or occurred in the course of measures to disengage the contending forces or otherwise to end the military confrontation between the two sides.

H. Other Fora

57. This claim has not been filed in any other forum.

Annex A
List of Evidence

Pursuant to Rule 24(1), Eritrea submits the following list of evidence that it may submit:

1) Written affidavits of victims, witnesses and expert witnesses;
2) Ethiopian Passports and other Identity Documents;
3) Licenses;
4) Government Records,
5) Bank Books;
6) Business Ledgers;
7) Correspondence;
8) Reports form Non-Governmental Organizations;
9) United Nations Reports,
10) World Bank Reports;
11) Reports Compiled by the Governmental of Ethiopia;
12) Reports Compiled by the Government of Eritrea;
13) Reports Compiled by the University of Asmara;
14) International News Reports;
15) Ethiopian News Reports from Private and State Owned Newspapers;
16) Eritrean News Reports;
17) Maps;
18) Photographs;
19) Videotape; and
20) Oral witness testimony.

Submission

The State of Eritrea, which reserves the right to supplement and develop its claim further in subsequent pleadings and oral argument, respectfully submits the attached Statement of Claim.

/s/ Ali Said Abdella

Ali Said Abdella
Foreign Minister, the State of Eritrea
Agent of the Government of the State of Eritrea

ERITREA - ETHIOPIA CLAIMS COMMISSION

The STATE OF ERITREA

Claimant,

- against -

The FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Respondent.

STATEMENT OF CLAIM ON BEHALF OF HIWOT NEMARIAM

1. Claimant, the State of Eritrea ("Eritrea'') hereby notifies Respondent, the Federal Democratic Republic of Ethiopia ("Ethiopia") that it demands arbitration of the claims of Hiwot Nemariam pursuant to Article 24 of the Rules of Procedure of the Eritrea Ethiopia Claims Commission ("Rules of Procedure"), and Article 5 of the Agreement Between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea, dated December 12, 2000 (the "Peace Agreement").

2. Eritrea brings this action on behalf of HIWOT NEMARIAM, a denationalized Ethiopian citizen of Eritrean origin, who was unlawfully arrested, detained and expelled from Ethiopia on July 6, 1998, and whose bank accounts and other property were confiscated by Ethiopia. Ms. Hiwot has not received any compensation for her confiscated property or for the injuries suffered during her arrest, detention and expulsion. Eritrea seeks damages on behalf of Ms. Hiwot equal to the value of her confiscated property, compensatory damages for the harm. suffered on account of her unlawful detention, expulsion,

denationalization and displacement, plus interest, cost and fees.

JURISDICTION

3. The Claims Commission has jurisdiction over this action pursuant to Article 5, paragraph 1 of the Peace Agreement, which declares, in relevant part, that:

> 1. The mandate of the Commission is to decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict that was the subject of the Framework Agreement, the Modalities for its Implementation and the Cessation of Hostilities Agreement, and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.

4. The takings claim presented herein by Eritrea was filed, as part of a class action, in the United States District Court for the District of Columbia on June 12, 2000. *See Hiwot Nemariam, et al. v. Ethiopia and the Commercial Bank of Ethiopia,* Civ. 00-CV-1392-TPJ. On August 2, 2001, upon the defendants' motion, the District Court dismissed the case without prejudice on *forum non conveniens* grounds, in favor of this Claims Commission. That decision is currently pending appeal by the plaintiffs.

5. Article 5, paragraph 8, of the. Peace Agreement states, in relevant part:

> Except for claims submitted to another mutually agreed settlement mechanism in accordance with paragraph 16 or filed in another forum prior to [December 12, 2000], the Commission shall be the sole forum for adjudicating claims described in paragraph 1 or filed under paragraph 9 of this article[.]

Eritrea stated its position to the District Court that the establishment of the Commission should not in any way affect the plaintiffs' right to proceed in the *Hiwot Nemariam* case, and reiterates that position here: Eritrea does not intend this filing to interfere in any way with Ms. Hiwot's right to proceed in that case.

PARTIES

6. The name and address of the claimant is:

State of Eritrea
c/o Ministry of Foreign Affairs
Asmara, Eritrea

Correspondence to be addressed to:

Office of the Legal Advisor to the Office of the President
Asmara, Eritrea
Telephone (291) (1) 20-12-60
Fax (291) (1) 12-21-42
e-mail legaladv@eol.com.er

7. Eritrea brings this action on behalf of Hiwot Nemariam, who is now a citizen of Eritrea, pursuant to Article 24 of the Rules of Procedure. Ms. Hiwot currently resides in Asmara, Eritrea.

STATEMENT OF THE FACTS

Expulsions of "Eritreans" From Ethiopia

8. In June 1998, after the start of the war between Ethiopia and Eritrea, Ethiopia began a program of publicly identifying, detaining, and expelling from Ethiopia persons it deemed to be Eritrean or of Eritrean origin or descent.

9. On or about June 12, 1998, an Ethiopian government spokesperson announced that Ethiopia's security apparatus had uncovered lists of Eritreans living in Ethiopia "who were engaged in spying and mobilizing financial and other resources to support the Eritrean aggression." The same day, the Ethiopian Ministry of Foreign Affairs issued a press release entitled "Precautionary Measures Taken Regarding Eritreans Residing in Ethiopia."[1] According to the press release, officials of the Eritrean Peoples' Liberation Front in Addis Ababa, leaders and senior functionaries of the Eritrean Community Organization in Addis Ababa, and other individuals of Eritrean origin or descent accused of "taking advantage of their residence in Ethiopia" and "raising money for the Eritrean war effort" or being "involved in spying activities" were required to leave Ethiopia. *Id.*

10. The press release claimed that the property of these Eritreans would "not be confiscated" and that they would be "allowed to nominate an agent/agents to look after their interests." *Id.* In the days that followed, the Ethiopian Ministry of Foreign Affairs represented to the international community that deportations would follow a three-part process: (i) determination of which Ethiopians of Eritrean descent were in fact Eritrean citizens; (ii) determination of which categories of alien Eritreans constituted a national

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[1] Available at <http://www.ethemis.se/s980612.2htm>

security risk; and (iii) deportation of such individuals, fully respecting due process and the right of appeal, preserving their property rights, and abiding by international human rights law.

11. In practice, Ethiopia began a campaign of mass expulsion of persons of Eritrean origin or descent without notice or due process. This campaign did not follow the three-part process articulated by the Ministry of Foreign Affairs. Instead, Ethiopia singled out tens of thousands of people on the basis of their Eritrean origin or descent, classified them as a group designated "Eritreans," and, based on that classification, treated them as foreign nationals and targeted them for discriminatory treatment. Ethiopia's Immigration Office assembled lists of "Eritreans" based on their birth in Eritrea, membership in Eritrean organizations or the fact that they voted or were eligible to vote in the 1993 Eritrean referendum on independence. According to the Ethiopian Government, anyone appearing on those lists is Eritrean and cannot be an Ethiopian citizen. Ethiopia therefore stripped the citizenship of all "Eritreans" who had up to that time been Ethiopian citizens. In mid-August 1999, Ethiopia required all "Eritreans" 18 years of age and older to register with the Government.

12. Expulsions of individuals of Eritrean origin or descent typically were carried out according to a similar pattern. Ethiopian security officers arrested the "Eritreans" and jailed them in police stations. Some of these arrests, including arrests of pregnant women, children and the elderly, took place in the middle of the night. Next, deportees were forced aboard buses and driven either to a holding area or directly to the Eritrean border, a trip that sometimes took upwards of nine days. This bus journey was harrowing, humiliating and dangerous. Due to the extreme heat, unsanitary conditions and lack of food or drink provided, many deportees became ill en route.

Bank Accounts and Other Property of "Eritreans" Were Seized

13. On or about June 12, 1998, at the same time that Ethiopia initiated the expulsions, the Ethiopian Government also issued an order freezing the bank accounts of persons of Eritrean origin or descent, which prevented any access to or withdrawal of funds from these accounts.

14. Ethiopia also seized other property owned by persons of Eritrean origin or descent, who were deported from or otherwise forced to leave or remain away from Ethiopia. In many instances, Ethiopia caused such property to be auctioned off by the Commercial Bank of Ethiopia ("CBE") for the benefit of CBE and Ethiopia.

15. Moreover, persons of Eritrean origin or descent who were summarily expelled from Ethiopia were also forced to abandon other property, including their homes, businesses, cars, furniture and various personal effects.

16. Only persons of Eritrean origin or descent whom Ethiopia treated as "Eritrean" have been subjected to the summary deportation and confiscation of property described above. No other groups were singled out by nationality, ethnicity, citizenship or otherwise for similar mistreatment at the hands of the Ethiopian authorities or the agents and instrumentalities of Ethiopia.

International Condemnation of Mass Expulsions of Eritreans

17. The United Nations, the United States, and independent, international nongovernmental organizations have all documented and condemned Ethiopia's mass detentions and expulsions of and related acts against people of Eritrean origin or descent. In a press release dated July l, 1998, United Nations High Commissioner for

Human Rights Mary Robinson said she was "deeply concerned by the violation of human rights of Eritrean nationals being expelled from Ethiopia, and particularly by the fact that their passports are being stamped 'expelled, never to return."[2] She stated that "[t]hese are serious violations of the rights and freedoms set forth in the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights, to which Ethiopia is a party." *Id.*

18. In an August 6, 1998, press release, the United States Department of State said that "[t]he United States views with deep concern the detention and expulsion of ethnic Eritreans in and from Ethiopia."[3] The State Department found that there were "fundamental humanitarian and human rights concerns raised by the forcible separation of families, the undue hardships of those detained or expelled to Eritrea, and the financial losses caused by sudden expulsions." *Id.* It urged Ethiopia "to allow all those who were wrongfully expelled to return and to establish a compensation commission to investigate and recommend compensation for the claims resulting from undue financial loss and hardship as the result of rapid, forced expulsions." *Id.*

19. The State Department's 1998 Country Report on Human Rights Practices for Ethiopia similarly concluded that Ethiopia had "abrogated due process and detained and deported Eritreans and Ethiopian citizens of Eritrean origin."[4] The Report further stated that these "sudden expulsions raised fundamental concerns regarding arbitrary arrest and detention,

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2 *Available at* <http://www.unhcr.ch/Huricane/Huricane.nsf/94ed9fed71c04647802566100031b4bd/990066e6a0fdffe80256636004c86a6?/OpenDocument>

3 *Available at* <http://secretary.state.gov/www/briefings/statements/1998/ps980806.html>

4 *Available at* <http://www.state.gov/www/global/human_rights/1998_hrp_ report/ Ethiopia.html>

forced exile, the forcible separation of families, nationality issues, and the hardship and financial losses suffered by those who were detained or expelled." *Id.*

20. The State Department reiterated these criticisms in its 1999 and 2000 Country Reports for Ethiopia. In 2000, the Report stated, "The [Ethiopian] Government's actions raised serious issues of due process since there were no preliminary hearings to determine the merits of the deportations, no right to counsel was provided to detainees, and detainees only had a very circumscribed opportunity to register protests."[5]

21. In a January 1999 report entitled "Amnesty International Witnesses Cruelty of Mass Depeportations," Amnesty echoed the U.N. and governmental condemnation.[6] Similarly, Human Rights Watch detailed and described the mass arrests and deportations in its 1999, 2000 and 2001 World Reports.[7]

Actions Taken Against Hiwot Nemariam

22. Hiwot Nemariam is 70 years old. She was born in Asmara, Eritrea, on February 12, 1931, when Eritrea was still an Italian colony. *See* Declaration of Hiwot Nemariam dated February 2001 ("Hiwot Decl."), attached hereto as Appendix A, ¶ 2. Ms. Hiwot moved with her family to Addis Ababa, Ethiopia, in 1972, when Eritrea was part of Ethiopia. She resided there until her expulsion in 1998. *Id.* ¶ 3. She voted in the Ethiopian federal elections in 1995. *Id.* ¶ 3. At the time of her expulsion,

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5 *Available at* <http://www.state.gov/www/global/human _rights/2000_hrp_report/ Ethiopia.html>

6 *Available at* <http://www.amnesty.org/news/1999/ 12500299.html>

7 *Available at* <http://www.hrw.org/worldreport99lafrica/ethiopia. html>;<http://www.hrw.org/wr2k/Africa-03.htm #TopOfPage>; <http://www.hrw.org/wr2kl/Africa/ethiopia.html>

Ms. Hiwot carried an Ethiopian passport, No. E061512, issued on May 18, 1990. *Id.*, Exhibit 1. She also had an Ethiopian identity card, which was seized and destroyed following her arrest.

23. Ms. Hiwot was married to Belay Redda on February 5, 1946. They have four children, all of whom are now United States citizens. *Id.* ¶ 2. Mr. Belay was a member of the Ethiopian civil service for 36 years, serving with distinction and holding positions including Director of Transport Department, Director of Industry and Commerce Head Office, and Director-General of the Tax Office of the Ministry of Finance. Mr. Belay was arrested and expelled from Ethiopia on June 13, 1998. Mr. Belay has also petitioned the Eritrean government to present his claims to the Claims Commission. *See generally,* Statement of Claim on Behalf of Belay Redda.

24. On or about June 13, 1998, at approximately 1:00 p.m., five Ethiopian police and military officials, armed with machine guns, arrested Hiwot Nemariam's husband Belay Redda while he was alone at the family-owned dry cleaning business in Addis Ababa. Hiwot Decl. ¶ 5. He was expelled from the country the following day.

25. Hiwot Nemariam remained in Ethiopia for approximately two weeks after her husband, Mr. Belay, was arrested and deported. Id. ¶¶ 10-11. Around the time of her husband's deportation, Ms. Hiwot heard that Ethiopian Prime Minister Meles Zenawi had announced on the radio, in newspapers and on television that the families of deportees would be allowed to remain and work in Ethiopia. Id ¶ 5. Acting in reliance on that announcement, Ms. Hiwot did nothing to liquidate her family's assets. She did, however, pay all back-taxes that existed on the family business and received a certificate of clearance to document that the property was unencumbered. *Id.* ¶ 7.

26. Five or six Ethiopian authorities from the *kebele* (district administration and governance) then came to Mr. Belay's and Ms. Hiwot's dry-cleaning business and demanded she show them her business papers, licenses, utility and tax records. Without revealing the purpose of their visit, they were threatening and intimidating toward her. *Id.* ¶ 7.

27. A few days later, Ms. Hiwot attempted to withdraw funds from the joint account she shares with her husband at the Tedros Square Branch of CBE. She was informed that her account was inaccessible, and that "Eritrean accounts are blocked." The bank official named other Ethiopians of Eritrean origin or descent with frozen bank accounts. *Id.* ¶ 8.

28. Later that week, *kebele* officials told Ms. Hiwot to report to the *kebele* at 3 p.m. When she arrived, the Ethiopian officials told her that she would be leaving in one month, and that she should prepare to depart by selling all of her belongings. Ms. Hiwot said that this was impossible, and the officials told her that if she could not sell her property, the government would take action over the property. *Id.* ¶ 9.

29. On or about July 3, 1998, Ms. Hiwot was arrested at her house at approximately 3:00 a.m. by seven or eight military officers armed with machine guns. *Id* ¶ 11. She was detained in an auditorium with 90 other men, women, and children, most of whom she was able to recognize as individuals of Eritrean origin or descent from her community. The authorities destroyed her Ethiopian identity card. *Id.* ¶ 12.

30. Over the course of the next three days, Ms. Hiwot was interrogated about her connection to the Eritrean government, photographed and told that she was being deported because she was "Eritrean." *Id.* ¶ 13. Ms. Hiwot was not provided any food, water or space to sit or rest during the entirety of her detention. *Id.* ¶ 12. She was not given the opportunity to contact anyone or told what would happen to her or her property. She was not told whether she had a right to a hearing or appeal. She saw some workers from the International Committee for the Red Cross

enter the auditorium, but they told the group there was nothing they could do for them.

31. On or about July 6, 1998, Ms. Hiwot was loaded onto a bus with approximately 70 other detainees, and she experienced a harrowing five-day journey to the border. Ms. Hiwot and the others were dropped off at the Ethiopian border and left to make the walk to Adi Ugri, the nearest town in Eritrea. *Id.* ¶ 15.

32. Ms. Hiwot has been unable to return to Ethiopia since her expulsion, and thus has been unable to access her money on deposit with the CBE or her other property (even if it were not subject to the seizure order). Ethiopian banking law does not permit personal checking accounts and requires holders of savings accounts to appear in person to withdraw funds. There is no automated teller network for Ethiopian banks, and wire transfers out of personal accounts are not permitted. Due to the Ethiopian Government's seizure order, and due to her deportation, Ms. Hiwot has been deprived of access to those accounts held by her, her husband, or jointly by her and her husband. The bank accounts currently held by CBE as follows *(see generally* Statement on Behalf of Belay Redda):

- two Certificates of Deposit: CD #38453, at the M. Gandhi Road Branch of CBE, worth 1,125,291.56 Birr (approximately U.S. $160,865)[8]; and CD #1669, at the Tedros Square branch of CBE, worth 304,585.57 Birr (approximately U.S. $43,540); and

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[8] The U.S. dollar value of confiscated assets has been calculated using the Birr to dollar exchange rate of June 12, 1998 - the date when the Ethiopian Government initiated expulsions of persons of Eritrean origin, descent or nationality and issued the order freezing their bank accounts. The exchange rate then was 0.14295228 dollars to the Birr.

- two savings accounts: Account No. 16296, at the M. Gandhi Road Branch of CBE, with a balance of 21,382.33 Birr (approximately U.S. $3,055); and Account No. 10136, at the Tedros Square Branch of CBE, with a balance of 54,014.39 Birr (approximately U.S. $7,720); and
- one checking account: Account No. 209, at the M. Gandhi Road Branch of CBE, for the dry cleaning business, with a balance of 10,000 Birr (approximately U.S. $1,430).

33. Following Ms. Hiwot's deportation, CBE, at the behest of Ethiopia, sold her family's dry cleaning business, worth an estimated 2 million Birr (approximately U.S. $285,900), at a public auction for approximately 1% of its fair market value. The business was auctioned under the pretext that the property was burdened by a tax debt but, in fact, the property was documented to be unencumbered. *See* Declaration of Belay Redda, attached hereto as Appendix B.

34. After her deportation, an acquaintance of Ms. Hiwot and Mr. Belay, Ms. Aster Araia, tried to protest the confiscation of their property and to prove that no taxes were owed. The Ethiopian authorities told her to stop interfering. Id. .

35. Ms. Hiwot has been deprived of all use, enjoyment or opportunity to dispose of her property since her expulsion from Ethiopia. She has not received any indication that she will see the return of her property or be paid compensation therefor. In light of all of the circumstances, Ms. Hiwot has no prospect that she will ever recover her property or receive compensation for its confiscation.

Claim I

Unlawful Taking of Property

36. Ethiopia, in arbitrarily seizing and disposing of the property of Ms. Hiwot, has taken her property in violation of applicable municipal law, including Eritrean and Ethiopian law, and in violation of international law.

37. The taking of Ms. Hiwot's property violated Article 40 of the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter Ethiopian Constitution), which details extensive rights to keep and use property, and which states that government may expropriate private property for public purposes only if it pays "in advance compensation commensurate to the value of the property." Ethiopian Constitution, Art. 40(8).

38. It is well-established that a government taking of property violates international law when it is (*i*) not for a public purpose, or (*ii*) discriminatory, or (*iii*) not accompanied by full compensation. *See, e.g., The Factory at Chorzow*, P.C.I.J. ser. A, No. 17 (1928). Article 17(2) of the Universal Declaration of Human Rights guarantees that "no one shall be arbitrarily deprived of his property."[9] The International Covenant on Civil and Political Rights provides that "in no case may a people be deprived of its own means of subsistence."[10]

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[9] G.A. Res. 217(A)(III), U.N. Doc. A/810 at 71 (1948) (hereinafter UDHR).

[10] Art. 1(2).G.A. Res. 2200(A)(XXI), 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/6316 at 52, 999 U.N.T.S. 171 , *entered into force* Mar. 23, 1976 (hereinafter ICCPR). The Federal Democratic Republic of Ethiopia ratified the International Covenant on Civil and Political Rights on June 11, 1993. The identical language is also contained in Article 1(2) of the International Covenant on Economic, Social, and Cultural Rights, GA. Res. 2200(A) (XXI), 21 U.N. GAOR Supp. No. 16, U.N. Doc. A/6316 at 490993 U.N.T.S. 3, *entered into force* January 3, 1976. Ethiopia ratified

39. Further, the African Charter on Human Rights states that "the right to property shall be guaranteed," with very limited power of eminent domain.[11]

40. Ethiopia has taken Ms. Hiwot's property without a public purpose, in a discriminatory manner and without compensation. Accordingly, Ethiopia's conduct constitutes an actual confiscation of Ms. Hiwot's property or, at a minimum, has interfered with Ms. Hiwot's property rights to such a substantial degree and for such an extended period as to amount to a taking of that property under international law and the Ethiopian Constitution.

41. Ms. Hiwot estimates her total losses, including household goods; personal property, the above-listed bank accounts, cash and other valuables, at over 6 million Birr, or approximately U.S. $857,715. *Id.*

42. An award of damages is the appropriate remedy in these circumstances for this illegal taking of property.

Claim II

Unlawful Displacement

43. Ethiopia, in removing Ms. Hiwot from her home and expelling her from the country, has violated international law against displacement and the Ethiopian Constitution.

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the International Covenant on Economic, Social and Cultural Rights in 1993.

[11] Art. 14. OAU Doc. CAB/LEG/67/3 rev. 5,21 I.L.M. 58 (1982), *adopted* Jan. 27, 1981, *entered into force* Oct 21, 1986 (hereinafter African Charter). *See* also European Convention on Human Rights, Rights (hereinafter ECHR), Protocol 1, E.T.S. 9,213 U.N.T.S. 262, *entered into force May* 18, 1952, Article 1 ("Every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except, except in the public interest and subject to the conditions provided for by law and by the general principles of international law.")

44. This norm of international law was codified in the Universal Declaration of Human Rights, which guarantees that "everyone has the right to freedom of... residence," and "everyone has the right... to return to his country."[12] The ICCPR similarly provides that all citizens "have the right to liberty of movement and freedom to choose his residence." ICCPR, Art. 12. The African Charter also protects the "freedom of movement and residence." African Charter, Art. 12(1).

45. The displacement of Ms. Hiwot also violated Article 32 of the Ethiopian Constitution, which guarantees that every person has the "freedom to choose his residence."

46. Ethiopia's actions, in displacing Hiwot Nemariam, were precisely targeted to permanently deprive her of her home and businesses. As such, these actions violated international law and the Ethiopian Constitution, for which Hiwot Nemariam is entitled to compensation.

Claim III

Unlawful Detention

47. Ethiopia, in arbitrarily arresting and detaining Hiwot Nemariam without due process, violated well-established international law and the Ethiopian Constitution.

48. Article 9 of the UDHR explicitly prohibits "arbitrary arrest, detention, or exile." Similarly the African Charter states clearly that "no one may be arbitrarily arrested or detained." African Charter, Art. 6.

49. The ICCPR defines unlawful arrest and detention as:

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[12] UDHR, At. 13(1); Art. 13(2).

(1) an arbitrary arrest;

(2) an arrest not in accordance with such procedure as established by law;

(3) an arrest without the detainee being informed of the reasons for the arrest and the charges against him or her; or

(4) being arrested without being brought promptly before a judge.

ICCPR, Art. 9. The arrest and detention of Hiwot Nemariam violated all four of these categories. Furthermore, Article 9(5) of the ICCPR entitles anyone who suffers an unlawful arrest or detention to an "enforceable right to compensation."

50. The arrest and detention of Ms. Hiwot also violated Article 17(2) of the Ethiopian Constitution, which guarantees that no person will be subject to "arbitrary arrest, and no person may be detained without a charge or conviction against him." Further, these actions were in breach of Article 19 of the Ethiopian Constitution, which lists the rights of people being detained, including the right to be brought before a judge within 48 hours.

51. Because Ethiopia arbitrarily arrested, detained, and expelled Hiwot Nemariam, and because no efforts were made to inform Ms. Hiwot of any charges or to bring Ms. Hiwot before a judge, Ethiopia has committed an egregious violation of international law and its own Constitution, for which Ms. Hiwot is entitled to compensation.

Claim IV

Unlawful Expulsion

52. Ethiopia, in expelling Hiwot Nemariam, violated international law against unlawful expulsion and the Ethiopian Constitution.

53. The Universal Declaration of Human Rights guarantees that "no one shall be subject to...exile," and "everyone has the right...to return to his country."[13] The ICCPR similarly requires that all people "have the right to liberty of movement and freedom to choose his residence." ICCPR, Art. 12. Further, the African Charter explicitly forbids the "mass expulsion" of citizens such as Ethiopia's expulsion of tens of thousands of its own citizens. African Charter, Art. 12.[14]

54. The expulsion of Ms. Hiwot also violated Article 32 of the Ethiopian Constitution, which guarantees that "any Ethiopian national has the right to return to his country."

55. Moreover, Ms. Hiwot's expulsion violated international law even if Ethiopia claims she was not a citizen at the time. The ICCPR expressly provides that an alien may be expelled "only in pursuance of a decision reached in accordance with law," a condition precedent clearly not met in the case of Ms. Hiwot. ICCPR, Art. 13.[15] The African Charter explicitly forbids discriminatory mass expulsion, such as the expulsion of tens of thousands of Eritreans from Ethiopia in which context Ms. Hiwot was expelled. African Charter, Art. 12. American and European human rights

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[13] Id., Art. 9; Art. 13(2).

[14] American and European human rights treaties also expressly prohibit the expulsion of citizens. *See* ECHR, Protocol IV, E.T.S. 46, I.L.M. 978, *entered into force* May 2, 1968, Art. 3; American Convention on Human Rights, O.A.S. Off. Rec. OEA/Ser. K/XVI/1.1, Doc. 65, Rev. 1, Corr. 1, January 7, 1970, 9 I.L.M. 101, *entered into force* July 18, 1978 (hereinafter ACHR), Art. 22(5).

[15] Note that the U.N. Human Rights Committee has determined that "Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions." U.N. Doc. A/41/40, Annex V1, paras. 9-10, 1986.

treaties also prohibit the collective expulsion of aliens. See ECHR, Protocol IV;[16] ACHR, Art. 22(9).[17]

56. Ethiopia's expulsion of Hiwot Nemariam from Ethiopia prevents Ms. Hiwot from returning to her home and business in Ethiopia. As such, these actions violated international law and the Ethiopian Constitution.

Claim V

Denationalization

57. Ethiopia stripped Hiwot Nemariam of her Ethiopian citizenship. Such denationalization is forbidden by Article 15 of the UDHR, which provides:

1) Everyone has a right to a nationality

2) No one shall be arbitrarily deprived of his nationality[.]

58. Ethiopia's denationalization of Ms. Hiwot also violated Article 33(1) of the Ethiopian Constitution which provides: "No Ethiopian shall be deprived of his or her Ethiopian nationality against his or her will."

59. This act of denationalization by the Ethiopian government against Hiwot Nemariam is a violation of both

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16 *See Becker v. Denmark,* Decision of the European Commission of Human Rights as to the Admissibility of Application 7011/75, 19 *Y.B. Ear. Conv. On. H.R. 416* (1976) (holding that expulsion could only be permissible when taken after a "reasonable and object examination of the particular cases of each alien group.")

17 Moreover, commentators find that mass expulsions of aliens, without due process, during or at the beginning of a war violate humanitarian law as set forth in the Fourth Geneva Convention. *See* JEAN PICTET (ED.), COMMENTARY TO THE IVTH GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN THE TIME OF WAR 266 (1958).

international law and Ethiopian law, and damages should be assessed accordingly.

RELIEF SOUGHT

60. Eritrea, on behalf of Hiwot Nemariam, respectfully requests an award:

a. awarding Eritrea on behalf of Hiwot Nemariam damages in an amount reflecting the fair market value of her property at the time of its confiscation;

b. awarding Eritrea on behalf of Hiwot Nemariam compensatory damages for the harm suffered in an amount to be determined by the Commission;

c. awarding interest accrued and costs and fees incurred in bringing this claim;

d. granting such other and further relief as is just and proper.

CONCLUSION

61. Eritrea reserves the right to supplement or amend this Statement of Claim, and to submit further documents and evidence as it may deem necessary or appropriate.

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 97--JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

Sec. 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case--

. . .

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States. . . .